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11 Chapter 11 Trustee

12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **LOS ANGELES DIVISION**

15 In re
16 LESLIE KLEIN,
17 Debtor.

18 Case No.: 2:23-bk-10990-NB

19 Chapter 11

20 **REPLY OF CHAPTER 11 TRUSTEE TO
21 OPPOSITION FILED BY LESLIE KLEIN
22 AND BARBARA KLEIN TO APPLICATION
23 TO (A) EMPLOY COLDWELL BANKER
24 REALTY AS REAL ESTATE BROKER AND
25 (B) ENTER INTO EXCLUSIVE LISTING
26 AGREEMENT**

27 Date: May 20, 2025
28 Time: 2:00 p.m.
Courtroom: 1545
Location: 255 E. Temple Street
Judge: Hon. Neil W. Bason

29 [Relates to Docket Nos. 931 and 944]

30 Bradley D. Sharp, the duly appointed chapter 11 trustee (the “Trustee”) of the bankruptcy
31 estate of Leslie Klein (the “Debtor”), hereby files this reply (the “Reply”) to the opposition filed
32 by Leslie Klein and Barbara Klein [Docket No. 944] (the “Opposition”), to the *Chapter 11*
33 *Trustee’s Application to (A) Employ Coldwell Banker Realty as Real Estate Broker and (B) Enter*
34 *Into Exclusive Listing Agreement* [Docket No. 931] (the “Application”).¹ In support of the Reply,
35 the Trustee represents as follows:

36 _____
37 ¹ Capitalized terms not defined herein have meanings used in the Application.

L.

**THE OPPOSITION SHOULD BE OVERRULED BECAUSE IT
PROVIDES NO BASIS TO QUESTION THE TRUSTEE'S BUSINESS JUDGMENT
TO ENGAGE A BROKER AND ATTEMPTS TO RELITIGATE THE JUNE ST. ACTION**

The Trustee seeks to employ Coldwell Banker (“Coldwell”) for the purpose of marketing and selling the property located at 322 N. June Street, Los Angeles, CA (the “June St. Property”). As the Court is aware, the Trustee commenced an adversary proceeding, Adv. Case No.: 2:24-ap-01140 (the “June St. Action”), seeking, among other things, to quiet title to the June St. Property as an asset of the Debtor’s estate. Judge Klein entered an order granting the Trustee’s summary judgment motion on all counts. *See* [Adv. Docket No. 62] (the “MSJ Order”). The MSJ Order is not stayed and fully enforceable. While the Trustee acknowledges that the Debtor filed a stay request of the MSJ Order on April 29, 2025 [Docket Nos. 1035 and 1036], the request for a stay was filed *more than four months* after entry of the MSJ Order and provides little or no support for the relief requested nor justification for the extended delay. The Opposition is nothing more than indirect attempt by the Debtor to contest the MSJ Order and delay the Trustee’s disposition of the June St. Property. The Trustee provides further support for the Application and responds to each of issues raised in the Opposition.

A. The Engagement of a Broker is Routine and Any Sale Will Be Subject to a Separate Motion

The Trustee's engagement of Coldwell simply authorizes the Trustee to market and sell the June St. Property, but any such sale cannot be consummated until the Trustee obtains authorization from the Court pursuant to section 363 of the Bankruptcy Code. If Coldwell locates a suitable buyer, the Trustee is required to seek the Court's authorization to consummate any purchase and sale agreement for the June St. Property. As the record presently stands, the Trustee requires the services of Coldwell because he cannot market the June St. Property without a professional broker and the Court likely will not approve a sale of the June St. Property unless the Trustee demonstrates that the property has been thoroughly and adequately marketed. If a court determines that the MSJ Order should be reversed, then Coldwell simply will not sell the June St.

1 Property. However, until that happens the Trustee has demonstrated sufficiently that the Court
2 should approve the Application.

3 **B. The Joinder Motion Was Denied and NeverAppealed**

4 The Debtor and the other defendants in the June St. Action filed the *Motion to Join*
5 *Necessary Parties* [Adv. Pro. Docket No. 30] (the “**Joinder Motion**”), whereby they sought to
6 join the Debtor’s adult offspring because they are purportedly beneficiaries under one of the sub-
7 trusts under the “Klein Living Trust” referred to therein as the credit trust (the “**Credit Trust**”).
8 The Bankruptcy Court denied the Joinder Motion [Adv. Pro. Docket No. 46] (the “**Order**
9 **Denying Joinder Motion**”). The Order Denying Joinder Motion is a final order because it was
10 never appealed. Consequently, the Debtor’s offspring not being named in the June St. Action is no
11 longer a basis for an objection.

12 Moreover, the Credit Trust has never asserted an interest in the June St. Property. Initially,
13 the Debtor’s schedules reflected that the June St. Property is 50% owned by the Debtor and 50%
14 owned by the Debtor’s late spouse’s “Marital Deduction Trust” (the “**MDT**”) [Docket No. 34].
15 The Debtor’s story changed when he filed an answer to the complaint in the June St. Action where
16 he asserted that the MDT owns 100% of the June St. Property. [Adv. Pro. Docket No. 21]. As a
17 result, the Debtor sued the MDT, the Debtor, and the other sub-trusts of the Debtor’s living trust
18 (excluding the Credit Trust) and the MSJ Order is binding upon all of these parties.

19 Contrary to the Debtor’s assertion, a complaint does not fail to state a claim for quiet title
20 if it does not name parties who might claim an interest in the subject property. *Seror v. Stone (In*
21 *re Automated Fin. Corp.)*, 2011 Bankr. LEXIS 291 (Bankr. C.D. Cal. Jan. 25, 2011)(citing
22 *Blackburn v. Bucksport & E. R. R. Co.*, 7 Cal. App. 649 (Cal. App. 1908)(failure to name parties
23 claiming adverse interests in a quiet title action does not go to the cause of action). As the
24 legislative comment to section 762.010 of the California Code of Civil Procedure makes clear, the
25 failure to join any other adverse claimants in a quiet title action merely results in a judgment that
26 does not bind those unnamed parties, but it does bind the parties that are named. In the end, the
27
28

1 Credit Trust's unfounded assertions about its ownership interest in the June St. Property do not
2 matter until the Credit Trust legally establishes that it holds a legitimate ownership interest.

3 **C. The Trustees of the Living Trust and Sub-Trust
Acknowledged in Writing They Were Served**

5 After the Complaint was filed in the June St. Action, the Debtor and the other defendants
6 requested additional time to respond to the Complaint. The Trustee agreed, and the parties entered
7 into a stipulation [Adv. Pro. Docket No. 16] (the "Extension Stipulation"), which provided them
8 with additional time to respond to the Complaint.

9 The Extension Stipulation provides that "Each of the Defendants acknowledge being
duly served with a copy of the FAC [Complaint] and summons." (emphasis added). The
10 Extension Stipulation was executed by the Debtor, as co-counsel for the Debtor and each of the
11 subject trusts, and also executed by the Debtor in his capacity as trustee of: (a) the Second
12 Amended Klein Living Trust of 1990, (b) Marital Deduction Trust of Erika Klein (*i.e.*, the MDT),
13 (c) Survivors Trust of Leslie Klein, and (d) Leslie Klein. Each of the signature lines for the subject
14 defendants clearly reflects that the trustees of the above-described trusts acknowledged being duly
15 served and agreed to a new deadline to answer the Complaint. The Bankruptcy Court approved the
16 Extension Stipulation [Adv. Pro. Docket No. 20].

18 Contrary to the Debtor's assertions, the MSJ Order is effective and enforceable against the
19 Debtor's living trust and each of the sub-trusts thereunder because they never made a "direct
20 negative averment" in the answer to support a claim for a lack of capacity to be sued. The failure
21 to make a "direct negative averment" results in the waiver of such defense at trial or on appeal. While
22 the Federal Rules of Civil Procedure do not require a plaintiff to aver capacity, it does require a
23 defendant to plead absence of capacity. *Lang v. Tex. & Pac. Ry. Co.*, 624 F.2d 1275, 1277 (5th
24 1980). A defendant must challenge the plaintiff's allegations and a "specific negative averment
25 must be made in the responsive pleading or by motion before the pleading." *De Saracho v.
Custom Food Mach., Inc.*, 206 F.3d 874, 878 (9th Cir. 2000). A defendant that fails to make a
26 "specific negative averment in its answer, or at any time [sic] until the appeal, is deemed to have
27 waived that defense." *Summers v. Interstate Tractor & Equipment Co.*, 466 F.2d 42, 50 (9th Cir.
28 1973).

1 1972); *see also, Swain v. Moltan Co.*, 73 F.3d 711 (7th Cir. 1996) (holding that defendant against
2 whom default judgment was entered would not be allowed to argue on appeal that it lacked
3 capacity to be sued); *Howerton v. Designer Homes by Georges, Inc.*, 950 F.2d 281 (5th Cir.
4 1992)(holding that defendant did not object to complaint naming corporation as defendant in
5 “every capacity” waived claim that it could be held liable only in limited capacities). The Debtor
6 and the other defendants cannot now raise this defense because it has been waived.

7 **D. The Trustee Cannot Market and Sell the**
8 **June St. Property When it is Occupied by the Debtor**

9 The Trustee cannot market and sell the June St. Property while the Debtor and Barbara
10 Klein are occupying it. The Trustee must secure the June St. Property so that its value can be
11 preserved for the benefit of creditors. The Debtor has not engaged constructively with the Trustee
12 since his appointment and the Trustee is unwilling to work out an arrangement with the Debtor
13 until the June St. Property is sold. The Trustee considers the Debtor a liability and the estate will
14 be better served with the Trustee in control of the June St. Property; and the Trustee will take all
15 necessary precautions to safeguard the June St. Property from third parties, including the Debtor.

16 **II.**

17 **CONCLUSION**

18 For the reasons set forth herein and in the Application, the Opposition should be overruled
19 and the Application granted, authorizing the Trustee to retain Coldwell as real estate broker and
20 enter into an exclusive listing agreement.

21 Dated: May 1, 2025,

PACHULSKI STANG ZIEHL & JONES LLP

22 By: /s/ John W. Lucas
23 John W. Lucas

24 Attorneys for Bradley D. Sharp,
25 Chapter 11 Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

One Sansome Street, Suite 3430, San Francisco, CA 94105.

A true and correct copy of the foregoing document entitled (*specify*): **REPLY OF CHAPTER 11 TRUSTEE TO OPPOSITION FILED BY LESLIE KLEIN AND BARBARA KLEIN TO APPLICATION TO (A) EMPLOY COLDWELL BANKER REALTY AS REAL ESTATE BROKER AND (B) ENTER INTO EXCLUSIVE LISTING AGREEMENT** is served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **May 1, 2025**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**: On (date) **May 1, 2025**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL**
(state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **May 1, 2025**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

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Sherman Oaks, California 91403

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Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 1, 2025
Date

Oliver Carpio
Printed Name

/s/ Oliver Carpio
Signature

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Case 2:23-bk-10990-SK

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1 **2. SERVED BY UNITED STATES MAIL:**

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